

<b>STATE OF MONTANA</b> <b>COMPLIANCE SUPPLEMENT FOR AUDITS OF</b> <b>LOCAL GOVERNMENT ENTITIES</b>	REF: CNTY-1
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<b>PROGRAM/SUBJECT:     Counties - General Topics</b>	

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **GENERAL/SELF-GOVERNING POWERS:**

#### **1. Compliance Requirements:**

- A local government adopting a self-government charter may exercise any power, and may provide any services or perform any functions, not prohibited by the Montana Constitution, law, or charter. (Article XI, Section 6, of the Montana Constitution; MCA 7-1-101 & 102)
- A local government unit without self-government powers (i.e., a general power government) has powers provided or implied by law. The powers of incorporated cities and towns and counties must be liberally construed. (Article XI, Section 4, of the Montana Constitution)
- The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution. (MCA 7-1-104 & 105)

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **GENERAL/SELF-GOVERNING POWERS: - continued:**

#### **1. Compliance Requirements - continued:**

- A local government with self-government powers is prohibited from exercising the powers listed at MCA 7-1-111 and 7-1-112. A listing of mandatory provisions that a local government with self-government powers is subject to is found at MCA 7-1-114. Included in this list is “any law regulating the budget, finance, or borrowing procedures and powers of local governments”.
- A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation (i.e., the local government cannot establish standards or requirements which are lower or less stringent than those imposed by state law or regulation).
- A county has the powers specified in Title 7, MCA or in special statutes and has powers that are necessarily implied from those expressed powers. (MCA 7-1-2101)
- A county has the power to make contracts that may be necessary to the exercise of its powers. (MCA 7-1-2103)
- A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law. (MCA 7-1-2104)

#### **Suggested Audit Procedure:**

- **None** – These compliance requirements are included for informational purposes only, to address questions related to general and self-governing powers of a county government. (See also MCA 7-1-2105)

### **COUNTY CLASSIFICATION:**

#### **2. Compliance Requirements:**

- For the purposes of regulating the compensation and salaries of all county officers not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made. As provided in MCA 7-1-2111, counties are classified as follows:
  - (a) 1st class county - taxable valuation of \$50 million or more.
  - (b) 2nd class county - taxable valuation of \$30 million or more and less than \$50 million.
  - (c) 3rd class county - taxable valuation of \$20 million or more and less than \$30 million.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **COUNTY CLASSIFICATION - continued:**

#### **2. Compliance Requirements - continued:**

- (d) 4th class county - taxable valuation of \$15 million or more and less than \$20 million.
  - (e) 5th class county - taxable valuation of \$10 million or more and less than \$15 million.
  - (f) 6th class county - taxable valuation of \$5 million or more and less than \$10 million.
  - (g) 7th class county - taxable valuation of less than \$5 million.
- Taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:
  - (a) that portion of the county taxable value on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;
  - (b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;
  - (c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;
  - (d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;
  - (e) the value provided by the department of revenue under 15-36-332(7) (pertaining to oil and natural gas production taxes);
  - (f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;
  - (g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;
  - (h) the value provided by the department of revenue under 15-24-3001 (pertaining to electrical generation and transmission facilities);
  - (i) 6% of the taxable value of the county on January 1 of each tax year;
  - (j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702;
  - (k) **Effective October 1, 2007** – 33 1/3% of the value of bentonite produced during the previous year as provided in 15-39-110(14) and as reported under 15-39-101. (MCA 7-1-2111)

#### **Suggested Audit Procedure:**

- Review the calculation of taxable valuation for purposes of determining the county's classification to determine if it includes the appropriate items as stated above, and then determine if the county is properly classified based on its valuation.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **COUNTY CLASSIFICATION - continued:**

#### **3. Compliance Requirement:**

- If the county changes classification, the commissioners must, at their September meeting, make an order designating the class to which the county belongs. The classification will not change until the next succeeding first Monday in January. (MCA 7-1-2112) The salaries must be adjusted the following July 1, the onset of a new fiscal year for the county. (AGO #6, Vol. 41)

#### **Suggested Audit Procedure:**

- Compare the taxable valuation of the previous year to the year under audit to determine if the classification of the county has changed. If it has, read the minutes of the county commissioners' September meeting to determine if the commissioners made an order designating the change.

### **COUNTY TOOLS, MACHINERY & EQUIPMENT:**

#### **4. Compliance Requirement:**

- The county commissioners must biennially prepare and file with the county clerk and recorder an inventory of all county tools, machinery and equipment. (MCA 7-8-2111)

#### **Suggested Audit Procedure:**

- Determine whether the required inventory of county tools, machinery, and equipment was prepared and filed with the county clerk and recorder.

#### **5. Compliance Requirement:**

- Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition. (MCA 7-8-2112)

**(Note:** Many County Attorneys in the State also have private practices. The use of county equipment for the County Attorney's private practice is allowed only through a written agreement between the county and the County Attorney leasing the equipment for private business purposes. (AGO #10 & #20, Vol. 46)

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **COUNTY TOOLS, MACHINERY & EQUIPMENT - continued:**

#### **Suggested Audit Procedures:**

- Determine if any county tools, machinery, or equipment were loaned or leased during the audit period.
- If so, determine that a written agreement was executed and that the agreement includes all of the elements as required by MCA 7-8-2112.

### **EMPLOYEE BOND COVERAGE:**

#### **6. Compliance Requirements:**

- All county officers and employees must be bonded for the faithful performance of all official duties required by law. A county may have individual or blanket bonds. (MCA 2-9-701)
- The amount of the bond must be based on the amount of money or property handled by the employee and the opportunity for defalcation. (MCA 2-9-702)

#### **Suggested Audit Procedure:**

- Review the bond coverage for county officials and employees and determine if all individuals are bonded and if the bond coverage appears adequate.

#### **7. Compliance Requirements:**

- Bonds purchased by the board of county commissioners for county officers and employees must be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state, or by a self-insurance pool insuring counties as authorized by 2-9-211. (MCA 2-9-703)
- The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service. (MCA 2-9-704)

#### **Suggested Audit Procedure:**

- Review the county's bond coverage files to determine if the purchase of surety bonds was in compliance with the above requirements, and that the expense was charged against the appropriate budgets.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **RECORDS RETENTION & DISPOSITION:**

(**Note:** For more information on records retention schedules and records disposal procedures, go to: [http://sos.mt.gov/RMB/Disposing\\_Records.asp#local](http://sos.mt.gov/RMB/Disposing_Records.asp#local) )

### **8. Compliance Requirements:**

- Upon order of the board of county commissioners and with the written approval of the local government records destruction subcommittee, provided for in MCA 2-6-403, a county officer may destroy records that have met the retention period contained in the local government records retention and disposition schedules and that are no longer needed by the office. (MCA 7-5-2132)
- A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public. Notice must be provided to these entities at least 180 days prior to disposal of the public record. (MCA 2-6-405(1) & (2))
- Claimed records must be given to entities in the order of priority as listed above, and all expenses for the removal of claimed records must be paid by the entity claiming the records. In addition, the local government records committee, established in MCA 2-6-402, shall establish procedures by which public records must be offered and claimed pursuant to this section and shall maintain a central registry of the entities described above who are interested in receiving notice of the potential destruction of public records pursuant to this section. (MCA 2-6-405)

### **Suggested Audit Procedures:**

- If it is determined that county records were destroyed during the period under audit, determine that there was an order for destruction from the county commissioners and written approval from the local government records destruction subcommittee.
- If any records were destroyed that were more than 10 years old, determine that notice was provided to the Montana historical society, the state archives, universities and colleges, local historical museums and historical societies, Montana genealogical groups, and the general public, at least 180 days prior to the disposal of the record.
- If any records were claimed by one of the organizations listed above, determine that the claimed records were given to entities in the order of priority as listed above, and that all expenses for the removal of claimed records were paid by the entity claiming the records. In addition, determine that the procedures established by the local government records committee for offering and claiming public records pursuant to this section were followed.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **FINANCIAL RECORDS, RECONCILIATIONS & REPORTS OF OTHER OFFICERS:**

#### **9. Compliance Requirement:**

- The chief executive or governing body of a county may require any elected or appointed local government official or employee to: (a) maintain new or additional financial records; (b) perform new or additional financial reconciliations; and (c) submit new or additional financial reports. (MCA 7-6-612)

#### **Suggested Audit Procedures:**

- Determine if the chief executive or governing body has required other elected or appointed officials to maintain new or additional financial records, perform new or additional financial reconciliations, or submit new or additional financial reports.
- If so, determine that the records were maintained, the financial reconciliations performed, and the financial reports submitted in accordance with the chief executive's or governing body's directive.

### **ANNUAL FINANCIAL REPORT FILING:**

#### **10. Compliance Requirements:**

- The clerk and recorder must complete and present to the Department of Administration an annual financial report within 6 months after the close of each fiscal year. (MCA 2-7-503) (**Note:** See MCA 7-6-611 & 612, for additional information on annual financial reports.)

(**Note:** The Department of Administration shall prescribe the form of the annual financial report. (MCA 7-6-611) If a local government fails to file a report as required above, the Department of Administration may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty. (MCA 2-7-517))

- In addition, the clerk and recorder shall compile and present to the governing body of the county the annual financial report. (MCA 7-6-612(2)(b))

#### **Suggested Audit Procedure:**

- Determine whether the required annual financial report was completed and filed in a timely manner with the county commissioners and the Department of Administration.

(**Note:** If the local government has not complied with these statutes, we recommend that an audit finding be included in your audit report.)

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **ACCOUNTING METHODS - BARS Chart of Accounts**

#### **11. Compliance Requirements:**

- The Department of Administration shall prescribe the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish the general methods and details of accounting in accordance with generally accepted accounting principles. All counties, cities, and towns shall utilize the chart of accounts prescribed by the Department in the budgetary, accounting, and reporting system (BARS) for Montana cities, towns, and counties (ARM 2.4.401; MCA 7-6-611 & 2-7-504)

#### **Suggested Audit Procedure:**

- Determine whether the local government is using the fund numbers, balance sheet accounts, revenue accounts, expenditure accounts, and objects of expenditure as outlined in the BARS chart of accounts.

**(Note:** If the local government has not complied with these statutes, we recommend that an audit finding be included in your audit report.)

### **LOCAL GOVERNMENT AS AN INTERNET PROVIDER:**

#### **12. Compliance Requirements:**

- A county may act as an internet services provider if no private internet services provider is available within the jurisdiction served by the political subdivision; or the political subdivision provided services prior to July 1, 2001. (MCA 2-17-603)

**(Note:** Lincoln County appears to be the only political subdivision that was providing internet service prior to 7/1/2001. (MACO Newsletter - 10/2001))

- A county may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the political subdivision. (MCA 2-17-603)
- If a private internet services provider elects to provide internet services in a jurisdiction where a political subdivision is providing internet services, the private internet services provider shall inform the political subdivision in writing at least 30 days in advance of offering internet services. Upon receiving notice the political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice. (MCA 2-17-603)



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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **LOCAL GOVERNMENT AS AN INTERNET PROVIDER - continued:**

#### **12. Compliance Requirements - continued:**

- Nothing in MCA 2-17-603 may be construed to prohibit a political subdivision from offering electronic government services to the general public, or acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public. (MCA 2-17-603)

#### **Suggested Audit Procedures:**

- Through a review of Board minutes, other contracts and documentation, and revenue collection reports, determine if the entity is providing internet services within its jurisdiction.
- If yes, determine if there are any private internet services providers within the jurisdiction served by the county. If there are, determine that the county is only providing advanced internet services that are not otherwise available from a private internet services provider within the jurisdiction served by the county, or that the county was providing the internet services prior to July 1, 2001.
- If a private internet services provider has informed the county that it intends to provide internet services, determine that the county has notified its subscribers, as discussed above

### **ELECTRONIC GOVERNMENT SERVICES:**

#### **13. Compliance Requirement:**

- A county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to recover the costs of providing those services. (MCA 7-5-2133)

#### **Suggested Audit Procedure:**

- If the county is providing electronic government services and is charging for such services, review minutes of governing body meetings to determine that a convenience fee has been authorized by the governing body.

### **TAXES/FEES PAID BY CREDIT CARD:**

#### **14. Compliance Requirements:**

- A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment to the entity of taxes or fees that are legally authorized and imposed. If payment is made in

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **TAXES/FEES PAID BY CREDIT CARD - continued:**

#### **14. Compliance Requirements - continued:**

this manner, the tax or fee liability is not discharged and the person has not paid the tax or fee until the local government receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

- Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.
- A person who makes payments to a local government entity as provided in this section may be required to pay a convenience fee of up to 3% of the amount of the payment. The local government entity shall deposit the convenience fees collected in the appropriate fund.
- The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of this section. Fees paid to a financial institution or credit card company must be paid from an appropriate fund of the local government entity. A local government entity may enter into cooperative agreements with state agencies as necessary to carry out these provisions.

(MCA 7-6-617)

#### **Suggested Audit Procedures:**

- Through inquiry, determine if the local government entity accepts payments by credit card, debt card, charge card, etc. If so, and if a convenience fee is charged for this service, verify that the convenience fee is no more than 3% of the amount of the payment, and verify that the fee is deposited in an appropriate fund.

**(Note:** The county general fund will usually be the most appropriate fund.)

- If the local government entity receives notice of non-payment, determine if the local government entity charges the payer a fee. If so, verify that the “non-payment” fee is reasonable and does not exceed the costs of processing the claim for payment, and that the fee is added to the tax or fee due and collected in the same manner. Verify that this “non-payment” fee is deposited in an appropriate fund.

**(Note:** The county general fund will usually be the most appropriate fund.)

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **TAXES/FEES PAID BY CREDIT CARD - continued:**

#### **Suggested Audit Procedures:** – continued:

- Determine that any fees paid to a financial institution or credit card company are paid from an appropriate fund.

(**Note:** The county general fund will usually be the most appropriate fund.)

### **UNCLAIMED PROPERTY:**

#### **15. Compliance Requirement:**

- Title 70 Chapter 9, Part 8, MCA, pertaining to the Uniform Unclaimed Property Act provides that any property that is presumed abandoned, whether located in this or another state, is subject to the custody of the State of Montana. Property is presumed to be abandoned if it is unclaimed by the apparent owner during the time specified in MCA 70-9-803. **MCA 70-9-802(14)(b), provides that the provisions of the Uniform Unclaimed Property Act are not applicable to property held by a local government entity as defined by MCA 2-7-501.)**

#### **Suggested Audit Procedure:**

- **None** – This compliance requirement is included for information only, to address questions related to unclaimed property held by a county.

### **CITIZENS' RIGHT TO KNOW:**

#### **16. Compliance Requirements:**

- Every citizen has a right to inspect and take a copy of any public writings of this state.
- The following documents, however, may be withheld from public viewing:
  - (a) some library records as provided for in MCA 22-1-1103;
  - (b) some protected burial site locations as provided for in MCA 22-3-807;
  - (c) constitutionally protected records and materials (Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in MCA 30-14-402, and matters related to individual or public safety.) (MCA 2-6-102(3));
  - (d) records pertaining to individual privacy (MCA 2-6-102(4));
  - (e) records pertaining to individual or public safety or security of public facilities if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility (MCA 2-6-102(4));

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **CITIZENS' RIGHT TO KNOW - continued:**

#### **17. Compliance Requirements - continued:**

- (f) in cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment (MCA 27-18-111); or
- (g) adoption papers and records (MCA 42-6-101).

(MCA 2-6-102 & 104)

#### **Suggested Audit Procedures:**

- Inquire of management, and other employees to determine if the county has a policy established which addresses the citizens' right to know.
- If not, inquire of same individuals as to what records a citizen could review and copy if so requested.
- Through observation during the course of the engagement, determine if any citizen requested information from the county and received access to those records.